

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

|                              |   |                                    |
|------------------------------|---|------------------------------------|
| <b>ROBERT D. CARTER,</b>     | ) |                                    |
|                              | ) |                                    |
| Petitioner,                  | ) |                                    |
|                              | ) |                                    |
| v.                           | ) | <b>Case No. CIV 19-243-RAW-KEW</b> |
|                              | ) |                                    |
| <b>DEON CLAYTON, Warden,</b> | ) |                                    |
|                              | ) |                                    |
| Respondent.                  | ) |                                    |

**OPINION AND ORDER**

On November 24, 2020, Petitioner’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was dismissed as time-barred, and a certificate of appealability was denied (Dkt. 24). Judgment was entered on that same date (Dkt. 25). On December 30, 2020, Petitioner filed a “motion for reconsideration [under Fed. R. Civ. P. 59(e)], motion for evidentiary hearing, motion to expedite” (Dkt. 26). This Court denied the motion and denied a certificate of appealability on August 25, 2021 (Dkt. 30). Petitioner filed an appeal to the Tenth Circuit on September 7, 2021 (Dkt. 31). On February 17, 2022, the Tenth Circuit Court of Appeals denied Petitioner a certificate of appealability and dismissed his appeal in Case No. 21-7049 (Dkt. 42).

On June 10, 2022, Petitioner filed a “motion for relief from a judgment or order pursuant to Rule 60(b)(1),” challenging the dismissal of his habeas petition as time-barred (Dkt. 43). On June 13, 2022, the Court denied the motion as untimely, pursuant to Fed. R. Civ. P. 60(c)(1) (Dkt. 44). On June 27, 2022, Petitioner filed a notice of appeal to the Tenth Circuit Court (Dkt. 45). The next day, the Tenth Circuit entered an Order remanding the case back to this Court for a determination of whether a certificate of appealability should be issued for the denial of Petitioner’s motion for relief from judgment pursuant to Rule 60(b)(1). *Carter v. Clayton*, No. 22-7031 (10th Cir. June 28,

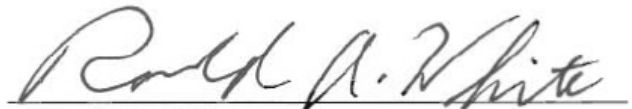
2022) (Dkt. 49).

After careful review, the Court finds Petitioner has failed to make a “substantial showing of the denial of a constitutional right,” as required by 28 U.S.C. § 2253(c)(2). He also has not shown “at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether [this] court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Therefore, a certificate of appealability cannot be issued.

**ACCORDINGLY,**

1. Petitioner is DENIED a certificate of appealability.
2. The Court Clerk is directed to transmit a copy of this Opinion and Order to the Tenth Circuit Court of Appeals, pursuant to the June 28, 2022, Order in Case No. 22-7031.

**IT IS SO ORDERED** this 17<sup>th</sup> day of August, 2022.

  
Ronald A. White  
United States District Judge  
Eastern District of Oklahoma